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UNITED NATIONS CONFERENCE ON THE SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session

PROVISIONAL SUMMARY RECORD OF THE FOURTEENTH MEETING

held at the Neue Hofburg, Vienna,
on Tuesday, 22 August 1978, at 11.25 a.m.

President: Mr. ZEMANEK (Austria)

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final record of the meeting are requested to submit them in writing, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, as soon as possible and not later than 30 September 1978.

CONSIDERATION OF THE QUESTION OF SUCCESSION OF STATES IN RESPECT OF TREATIES IN ACCORDANCE WITH RESOLUTIONS 3496 (XXX) AND 31/18 ADOPTED BY THE GENERAL ASSEMBLY ON 15 DECEMBER 1975 AND 24 NOVEMBER 1976 (item 11 of the agenda) (continued) (A/CONF.80/4 and 5 and Corr.1; A/CONF.80/JP.1 and JP.2)

Final clauses of the Convention proposed by the Drafting Committee (A/CONF.80/19)

Article [IV] - Entry into force

The PRESIDENT said that the previous day's meeting had deferred a decision on the Drafting Committee's text for article [IV] and the oral amendments thereto. Three amendments had been proposed to the figure for the number of ratifications required - ten - as it appeared in the text recommended by the Drafting Committee.

Mr. TORNARITIS (Cyprus) said he withdrew his delegation's amendment proposing 20 instruments.

Mr. NAKAGAWA (Japan) said his delegation wished to propose this figure of 20 instruments.

Sir Ian SINCLAIR (United Kingdom) said that in view of the fact that the amendment calling for 20 instruments had been reinstated, he would not insist on a vote on the United Kingdom amendment calling for 25 instruments.

The PRESIDENT put to the vote the Japanese amendment to article [IV].

The Japanese amendment was rejected by 42 votes to 28, with 8 abstentions.

The PRESIDENT put to the vote the amendment proposed by Iraq and the Netherlands, which called for 15 instruments.

The amendment proposed by Iraq and the Netherlands was adopted by 55 votes to 5, with 15 abstentions.

The PRESIDENT put to the vote article [IV] of the final clauses, as amended.

Article [IV] as amended, was adopted by 69 votes to 1, with 8 abstentions.

Articles 6, 7, 2, title of article 11, article 12 and article 12 bis as adopted by the Committee of the Whole

The PRESIDENT invited the Conference to adopt articles 6, 7, 2, the title of article 11, article 12 and article 12 bis as adopted by the Committee of the Whole at its 53rd meeting (article 6) and its 56th meeting (articles 7, 2, title of article 11, article 12 and article 12 bis) on 17 and 21 August 1978, which appeared in document A/CONF.80/22 and Corr.1, /23 and /24.

Articles 6 and 7

Articles 6 and 7 were adopted without a vote.

Article 2 (A/CONF.80/23)

Mr. KOH (Singapore) said that he wished to place on record his delegation's view that the concept of a newly independent State as defined in paragraph 1 (f) of article 2 was applicable to a case like that of Singapore.

Article 2 was adopted without a vote.

Title of Article 11 (A/CONF.80/24)

Mr. RANJEVA (Madagascar), noting that the word "regime" was used in the plural in the title of article 11, said it was his delegation's understanding that the title referred to boundaries established by treaty between the predecessor State and neighbouring States and that consequently neither the title nor the text of article 11 affected the principle of the territorial integrity of the successor State, based on the constant area of territory it had occupied for many years.

The title of Article 11 was adopted without a vote.

Article 12 (A/CONF.80/24)

Mr. NAKAGAWA (Japan) said that, as his delegation had stated at the twentieth meeting of the Committee of the Whole in 1977, it considered that the rules embodied in article 12, as in article 11, were rules of customary international law, which had been recognized both in the writings of jurists and in State practice. There were, however, legal situations created by treaty which, although having a dispositive effect, did not have the character of a boundary régime, for instance, treaties relating to the settlement of claims. It was one of the established rules of international law that legal situations created by such treaties were not affected by a succession of States as such.

Article 12 was adopted without a vote.

Article 12 bis (A/CONF.80/24)

Mr. ANIPEAUD (Ivory Coast) said that, while his delegation was not opposed to the adoption of article 12 bis, it interpreted its terms to mean that nothing in the Convention should affect the permanent sovereignty - as opposed

to the principles of international law affirming that concept - of every people and every State over its natural wealth and resources.

Mr. ROVINE (United States) said his Government considered article 12 bis to be ambiguous in two respects. In the first place, the type of treaties that would be covered by its provisions was not clear, although his delegation's impression was that it would be limited to those relating to the consumption of natural resources and consequently that transit and access rights would not be affected. Secondly, while his Government had no difficulty in accepting the principle of permanent sovereignty over natural wealth and resources, it had serious doubts as to the meaning to be attached to that principle.

His delegation's willingness, in the Committee of the Whole, to abstain in the vote on the article had been based on its understanding that the United Nations Declaration on Permanent Sovereignty over Natural Resources, as set forth in General Assembly resolution 1803 (XVII), would give a more precise meaning to the principle. In the light of the further debate and consideration of the matter, however, his Government now doubted whether that resolution in fact constituted the only basis for interpreting a principle that had been accepted by many delegations, and took the view that there was substantial ambiguity both in the drafting and in the meaning of article 12 bis.

As his delegation had already stated in the Committee of the Whole, it could have accepted the phrase "in accordance with international law", which appeared at the end of article 12 bis as originally formulated, and also the statement that nothing in the Convention should affect the relevant rights and obligations of States under international law and other treaties. It attached considerable importance to the preamble, which provided that the rules of customary international law would continue to govern questions not regulated by the Convention; that clause would be extremely useful in giving greater precision to article 12 bis. Since the Conference had not made its intent clear on the issues he had mentioned, however, his delegation was unable to accept the article and would vote against it. He requested that the vote be taken by roll-call.

Mr. MONCAYO (Argentina) said that one of the characteristics of an independent State was its freedom to dispose of its own natural resources. That did not mean that a successor State had to withhold such resources from the process of creation and change and from that exchange of goods and wealth which was one of the dynamic elements of modern international relations. Nor did it mean adopting an inward-looking nationalism that could only lead to stagnation. That had been the thinking behind his delegation's initial proposal, submitted in 1977, and it was the reason for its support of article 12 bis.

Many examples were to be found in developing countries of the mutual benefits which accrued from the pooling of their resources with other States as well as with international financial and technical organizations, foreign State-owned enterprises and private companies. Through co-operation in a variety of forms, it had proved possible to mobilize extensive resources, to undertake imaginative projects and to promote progress in general.

Article 12 bis, however, merely sought to ensure that a successor State would have a hand in controlling its own wealth and would have the power to decide, of its own free will, when and how the natural resources of its territory should be employed. For countries which lacked capital and technological know-how and which, in certain cases, were faced with increasing poverty, it was imperative that the attributes of political independence should be recognized and that those countries should be guaranteed the possibility of exercising sovereignty over their own natural resources. The transfer of political power to a State without an accompanying power to control and exploit those resources was but a nominal transfer of power that would not permit it to engage in any effective international co-operation.

Mr. ALVAREZ-VITA (Peru) said he endorsed the views expressed by the representative of Argentina.

Mr. MARESCA (Italy) said that, while his delegation would cast its vote in favour of article 12 bis, it would reiterate that it interpreted its terms as involving a total renvoi to international law. Thus, wherever the economic sovereignty of the State was to be respected, so were its obligations in respect of any investments of which it was the recipient.

In accordance with the request of the United States representative, a vote on article 12 bis was then taken by roll-call.

Upper Volta, having been drawn by lot by the President, was called upon to vote first. The result of the voting was as follows:

In favour: Angola, Argentina, Australia, Austria, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Egypt, Ethiopia, Finland, German Democratic Republic, Ghana, Greece, Guyana, Holy See, Hungary, India, Indonesia, Iraq, Ireland, Italy, Ivory Coast, Kenya, Kuwait, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mexico, New Zealand, Niger, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Yemen, Yugoslavia and Zaire.

Against: United States of America.

Abstentions: Belgium, Canada, France, Federal Republic of Germany, Israel, Japan, Netherlands and the United Kingdom of Great Britain and Northern Ireland.

Article 12 bis was adopted by 73 votes to 1, with 8 abstentions.

Mr. FLEISCHAUER (Federal Republic of Germany), speaking in explanation of vote, said his delegation had abstained in the vote on article 12 bis for the reasons which it had already stated in the Committee of the Whole on 18 August 1978, and principally because of the inherent ambiguity of its terms. The respect in which the Federal Republic of Germany held the permanent sovereignty of States over their natural wealth and resources had been demonstrated on many occasions.

It considered that such sovereignty should always be exercised in accordance with international law and with due respect for the rights of other States, territories and peoples protected by international law. Consequently, it felt itself to be in harmony with General Assembly resolution 1803 (XVII) which, in reference to the exercise of sovereignty over natural resources, spoke of "the mutual respect of States based on their sovereign equality".

Sir Ian SINCLAIR (United Kingdom), speaking in explanation of vote, said that his delegation had abstained in the vote on article 12 bis because, notwithstanding the efforts made in the Informal Consultations Group, it considered that the language of its provisions was still ambiguous. It would have preferred the reference to international law to come at the end of the sentence and considered that the provision would have been far clearer had it read: "Nothing in the present Convention shall affect the permanent sovereignty of every people and every State over its natural wealth and resources in accordance with international law".

His Government's basic position on the concept of permanent sovereignty over natural resources had been made clear on many occasions in the United Nations General Assembly and other United Nations bodies. It acknowledged that such a concept existed but maintained that its exercise was regulated by principles of international law which, in the final analysis, must be capable of resolving any conflict or potential conflict between the concept of permanent sovereignty and other concepts, such as that of acquired rights. That was the sense in which it interpreted the phrase "the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources". Within that context, account would naturally have to be taken of General Assembly resolution 1803 (XVII) which, in the view of his delegation - a view affirmed by the sole arbitrator in the Texaco Arbitration - constituted the most recent and generally accepted formulation of the concept of permanent sovereignty over natural resources and its relationship to international law.

He wished to reaffirm the remarks he had made in the Committee of the Whole regarding his understanding of the relationship between article 12 bis and the rest of the Convention, and to indicate that his delegation did not interpret article 12 bis as undermining or in any way affecting the principle of ipso jure continuity embodied in the rules set forth in Part IV of the Convention.

Title and text of the resolution concerning Article 30 (A/CONF.80/25)

Mr. GIL-MASSA (Mexico), referring to the roll-call vote taken on the draft resolution on Namibia (A/CONF.80/L.1), said he wished to call attention, in the strongest terms, to the fact that, although he had indicated before the result of the vote was announced that he wished to **cast** his vote, that request had not been granted. His delegation had further requested that the Secretariat include in the summary record a statement to the effect that Mexico would have cast its vote in favour of the draft resolution had also not been met. He would therefore point out that, in accordance with the practice followed throughout the United Nations family of organizations, any delegation could cast or amend its vote before the result of the vote was announced. Only if a delegation endeavoured to do so after the result had been announced would it be out of order.

The PRESIDENT said that due note would be taken of the Mexican representative's remarks.

Mr. DIENG (Senegal) asked that a vote be taken on the draft resolution concerning article 30 (A/CONF.80/25).

The title and text of the resolution concerning article 30 were adopted by 49 votes to 5, with 24 abstentions.

Peaceful settlement of disputes (Articles A, B, C, D and E, and Annex)
(A/CONF.80/C.1/L.60)

Mr. DUCULESCU (Romania) said his delegation considered that direct consultation and negotiation between the parties concerned, on the basis of equality of States and mutual respect, was to be regarded as the main means for resolving disputes in the sphere of succession of States to treaties as in any other sphere of international relations.

Articles A, B, C, D and E, and the annex thereto, relating to the peaceful settlement of disputes, were adopted without a vote.

Mr. TORRES BERNARDEZ (Deputy Executive Secretary of the Conference) said that he had been asked by the representative of the Secretary-General at the Conference, Mr. Erik Suy, the Legal Counsel, to make the following statement.

"In adopting the articles on the peaceful settlement of disputes and the annex relating to conciliation procedure, the Conference has decided, inter alia, that the expenses of the Conciliation Commission shall be borne by the United Nations. The relevant text is similar to that adopted at the

United Nations Conference on the Law of Treaties. Since this decision may have financial implications and entail expenses for the Organization, the General Assembly is clearly required to pronounce on its effects. The Conference might therefore decide, as was done in 1969, to request the United Nations General Assembly to consider paragraph 7 of the annex to the Convention and take the appropriate measures."

The PRESIDENT said that in the light of the statement just made by the Deputy Executive Secretary, if there were no objections he would take it that the Conference decided to request the General Assembly of the United Nations to consider the provisions of paragraph 7 of the annex to the Vienna Convention on Succession of States in respect of Treaties and take the appropriate measures.

It was so agreed.

Division of the Convention into parts and sections and titles thereof
(A/CONF.80/C.1/10)

The division of the Convention into parts and sections and titles thereof was adopted without a vote.

Draft report of the Committee of the Whole on its work at the resumed session of the Conference (A/CONF.80/C.1/L.61)

The draft report of the Committee of the Whole on its work at the resumed session of the Conference was adopted without a vote.

Title of the Convention (A/CONF.80/27)

Mr. YASSEEN (Chairman of the Drafting Committee) said the Drafting Committee proposed that the future Convention be entitled "Vienna Convention on Succession of States in Respect of Treaties". That was also the title proposed by the International Law Commission, and it was in keeping with the wording of article 1, which determined the scope of the Convention. The inclusion of the name of the town where the Conference had taken place was a tribute to the tradition which linked Vienna with the work for the progressive development and codification of international law.

Mr. LUKABU (Zaire) said his delegation considered that the English term "in respect of" was preferable to the French rendering "en matière de" and that it would like the Conference to note that it considered it would have been better if the title in French had corresponded exactly to the English title.

The title of the Convention was adopted without a vote.

Adoption of a Convention and other instruments deemed appropriate and of the Final Act of the Conference (item 12 of the agenda) (A/CONF.80/31)

The PRESIDENT invited the Conference to vote on the text of the draft Convention as a whole as contained in document A/CONF.80/31.

The Convention was adopted by 76 votes to none, with 4 abstentions.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that among the considerations that had led his delegation to vote for the Convention was the fact that that instrument constituted a further contribution to the codification and progressive development of international law. It reflected a progressive conception of succession of States in respect of treaties, according to which there was a clear division between cases of succession connected with the process of decolonization on the one hand, and cases of succession connected with all other methods of the formation of new States on the other.

The consecration in the Convention of the application of the "clean-slate" principle in the event of decolonization was, as the Chairman of the Committee of the Whole had remarked, of truly historic significance. Under that principle, States which gained their independence as the result of decolonization were freed from all the treaties concluded with respect to them by the former metropolitan Power. The statement of that principle gave undeniable legal force to a rule that derived from the Declaration on the Granting of Independence to Colonial Countries and Peoples that the General Assembly had adopted, on the suggestion of the socialist countries, in its resolution 1514 (XV). The inclusion of that principle in the Convention was of not only political but also great practical importance.

Despite the great changes that had occurred with the collapse of empires in Africa and other continents in recent decades colonialism had not been entirely eliminated. It clung tenaciously to life and continued to manifest itself as neo-colonialism in ever more varied and refined forms. It was therefore premature to say that there was no need for the "clean-slate" principle. Imperialist circles already had on their conscience numerous coups d'etat and anti-government plots, infamous secret operations, and the physical torture of such valiant sons of Africa as Lumumba, Ngouabé, Moudlane and Cabral. In their continuing efforts to preserve, and indeed to consolidate, their position in emerging countries and to direct the development of such States into forms of "partnership" acceptable to themselves, they sought to exert direct pressure on the patriotic forces of Zimbabwe and Namibia and to bring about a neo-colonialist solution of the Rhodesian and Namibian

questions. In addition, they recruited accomplices from among the members of puppet and anti-popular regimes, promoted neo-colonialist relations based on exploitation and plunder, and attempted to undermine progressive regimes and to weaken and, if possible, destroy the unity of African nations. They had even gone so far as to take direct military action against young States in Africa and elsewhere, using their own armed forces, a move that called to mind the worst days of colonial banditry. The forces of imperialism and reactionism were unable to reconcile themselves to the profound political, social and economic changes and the steady growth in strength that were occurring in young States.

The embodiment in the Convention of the "clean-slate" principle therefore dealt a severe blow to their aim of maintaining in force, in one form or another, the cabalistic conditions of the bilateral treaties of the colonial era on which the plunder and exploitation of dependent peoples had been based, while there was further cause for gratification in the fact that the Conference had decided against the inclusion in the Convention of provisions that would have provided encouragement for separatist movements in progressive developing countries and have opened the door to imperialist interference in their affairs.

It was of the very greatest significance that the Conference had reaffirmed in the Convention the principle of the inalienable sovereignty of peoples over their natural wealth and resources, which now stood confirmed as a peremptory rule of contemporary international law that was of universal import. It was no secret that the principal reason why the forces of imperialism, racism and reaction could not accept the changes that were occurring in Africa and elsewhere was that they wished to continue to exploit, and to maintain the control of their monopolies over, the natural riches of formerly dependent peoples. That was why they had girdled the earth with military bases designed to protect their access to foreign resources. The presence in the Convention of a provision emphasizing the illegality of the establishment of military bases on foreign soil was also therefore of great political and legal value.

The Soviet Union sought no advantages for itself on foreign territory; it did not go hunting for concessions, seek to attain political domination, or solicit permission to set up military bases. It remained firmly on the side of the peoples

that were struggling against the preservation of any form of colonialism or neo-colonialism and for national independence, social progress and democracy. It firmly condemned the military and political intervention of imperialism in the affairs of independent States and all encroachments upon their sovereignty and territorial integrity.

A further great merit of the Convention was that it reaffirmed the applicability in cases of succession, other than those which arose from decolonization, of the rule of continuity in treaty relations. It thereby underscored the generally recognized rule embodied in the Charter of the United Nations that pacta sunt servanda. That rule was of great importance in contemporary international relations. The USSR believed that, in the modern world, the unwavering observance of treaty obligations was in the interests of peace and security and of equitable and mutual beneficial co-operation among States. It strove consistently to ensure that aggression and imperialist arbitrariness were replaced in international relations by law and justice. It was a party to almost 10,000 valid international agreements and had proved itself in its 60 years of relations with foreign countries to be a bona fide partner of irreproachable honesty in the fulfilment of its obligations. The conscientious discharge of obligations deriving from generally recognized principles of international law was, indeed, a requirement of the Constitution of the USSR and of a recent law concerning the conclusion, implementation and denunciation of international agreements.

It was to be regretted that there were forces in the modern world that were not interested in the loyal discharge of agreements designed to promote peace and security and that opposed detente and sought to stir up hatred among peoples. Those forces included the most reactionary and inveterate circles of imperialism bound to the military-industrial complex. Among them were megalomaniac, petty bourgeois nationalists who sought to satisfy their great-Power, chauvinistic and hegemonistic ambitions by compacting with imperialism and militarism and recklessly drove their own peoples - and, with them, the peoples of their partners - along the road to disaster.

That being so, the provisions of the Convention which confirmed the inviolability of existing frontiers were most welcome, for they would serve as a powerful warning to those who harboured aggressive intentions against the territory of neighbouring countries and who based their foreign policy on the doctrine of racism and that of "living space". Incidentally, it was note-worthy that the

Convention had been adopted in the very building from which Hitler had proclaimed his infamous philosophy of Lebensraum and before which the forces that had destroyed Hitlerism and trampled underfoot the swastika as a symbol of aggression and encroachment on the territory of others paraded each month. It was also noteworthy that neither the Axis nor triple alliances had saved Hitler and those who had shared his views from condemnation by the peoples of the world or from the well-merited fate.

The Convention was, commendably, imbued with the spirit of peaceful co-existence and co-operation among States. Its Preamble stressed the special importance for the strengthening of peace and international security of consistent observance of general multilateral treaties which dealt with the codification and progressive development of international law and those whose object and purpose were of interest to the international community as a whole. It thereby gave further emphasis to the basic principles of international law concerning the prohibition of the use of force and all forms of infringement of the inalienable rights of all peoples set forth in the Charter of the United Nations. A further important point was that the Convention was based on a general understanding that succession of States in respect of treaties did not affect demilitarization of certain territories, freedom of navigation on international rivers and canals and in international straits, or various other international regimes.

His delegation was satisfied with the results of the work of the Conference and considered the Convention to represent a solid and substantial contribution to the cause of worldwide peace and justice. It was grateful to the President and the other officers of the Conference, the members of other delegations and the Secretariat for their co-operation and zeal in bringing the Conference to such a successful conclusion.

Mr. JAMARD (Iraq) speaking on behalf of the Group of Asian States, said that the adoption of the Convention marked a decisive phase in the codification of international law and the legal history of mankind. By its work, the Conference had ensured that international law, which had often served in the past as a cover for exploitation and crimes committed in its name, would henceforth protect States at the various stages in their history, particularly that of accession to independence.

The States for which he spoke wished to express their thanks to the Austrian Government and people for their hospitality and to the International Law Commission, the officers of the Conference, and all the other persons who had contributed to the successful outcome of the proceedings.

Tribute to the memory of President Jomo Kenyatta of Kenya

Mr. YACOUBA (Niger), speaking as the Chairman of the Group of African States, said that it was with the deepest regret that he had to inform the Conference of the death of President Jomo Kenyatta of Kenya. He would be grateful if arrangements could be made for the payment by the Conference of an appropriate tribute to that great leader of Africa.

Mr. MAHUNDA (Tanzania) said he supported the request by the representative of Niger.

Sir Ian SINCLAIR (United Kingdom) said that he spoke for the Group of Western European and Other States and for the United Kingdom as a member of the Commonwealth in mourning the passing of a most noble son of Africa who had struggled for years in defence of the interests of Kenya and of Africa as a whole. His delegation wished to express its condolences to the delegation of Kenya.

Mr. JANARD (Iraq), speaking on behalf of the Group of Asian States, said that he had been deeply moved by the announcement made by the Chairman of the Group of African States and wished to express his condolences to the members of that Group and to the delegation of Kenya in particular. Mr. Kenyatta had been a great leader of Africa and it was he who had laid the foundations of the struggle for independence in that continent.

On the proposal of the President, the Conference observed a minute's silence in tribute to the memory of President Jomo Kenyatta of Kenya.

The meeting rose at 1.10 p.m.